

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.04.2021

Judgment Delivered on :16.04.2021

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A. Nos. 2878 & 2882 of 2019

W.A. No. 2878 of 2019

Mrs. Marian Usha Rani

Bentinck Hr. Sec. School for Girls

Vepery, Chennai - 600 007

..Appellant

Versus

1. The Government of Tamil Nadu
Rep. By its Secretary
Department of School Education
Fort St. George
Chennai - 9.
2. The Joint Director of School Education
(Higher Secondary)
DPI Campus, College Road
Chennai - 600 006
3. The Chief Educational Officer
Panagal Building
Saidapet, Chennai - 600 015
4. District Educational Officer
Chennai North
Ambethkar School (upstairs)
Gandhi Irvin Bridge
Chennai - 600 008
5. The Association of St. Christopher's
College of Education,
Rep. By its Secretary,
63, EVK Sampath Road,
Vepery, Chennai - 7
6. Mrs. M. Ramani Jebathai

..Respondents

W.A. No. 2882 of 2019
The Association of St. Christopher's
College of Education
Rep. By its Secretary
63, EVK Sampath Road
Vepery, Chennai - 7

..Appellant

Versus

1. The Government of Tamil Nadu
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Ambethkar School (upstairs)
Gandhi Irvin Bridge,
Egmore, Chennai - 600 008
5. Mrs.M.Ramani Jebathai
W/o. Chellasley

..Respondents

Writ Appeals are filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 18.07.2019 made in W.P. Nos. 9620 & 9612 of 2014.

Prayer in W.P.No.9620 & 9612/2014:

This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings dated 12.3.2014 in Mu.Mu.No. 9554/W5/E3/2013 on the file of the 2nd respondent and the consequential proceedings dated 14.3.2014 in Na.Ka.No. 4348/A1/2013 on the file of the 4th respondent 1 to 4 and quash the same directing the respondents to accord approval to the appointment of Mrs.N.Marian Usha Rani as Headmistress in Bentinck Hr.Sec.School, Vepery, Chennai w.e.f. 1.9.2013.

For Appellant :: Fr. Xavier Arulraj, Senior Advocate
for M/s. Bala and Daisy
in W.A. No. 2878 of 2019

Fr. Xavier Arulraj, Senior Advocate
for M/s. Xavier Associates
in W.A. No. 2882 of 2019

For Respondents:: Mrs. P. Kavitha
Government Advocate
for RR1 to 4 in both Writ Appeals

Fr.Xavier Arulraj, Senior Advocate
for R5 in WA No. 2878 of 2019

Mr. V. Govardhanan
for Mr. R. Subburaj for R6
in WA No. 2878 of 2019

Mr. V. Govardhanan
for Mr. R. Subburaj
for R5 in W.A. No. 2882 of 2019

COMMON JUDGMENT

SATHI KUMAR SUKUMARA KURUP, J.

These Writ Appeals are filed against the common order dated 18.07.2019 made in W.P. Nos. 9620 & 9612 of 2014.

2. Two writ petitions have been filed before the learned single Judge namely WP Nos. 9612 and 9620 of 2014.

3. The first writ petition in WP No. 9612 of 2014 has been filed by the Association of St. Christopher's College of Education, Chennai praying to quash the proceedings dated 12.03.2014 of the second respondent as well as the consequential proceedings dated 14.03.2014 of the fourth respondent and after quashing the orders to issue a consequential direction to direct the official respondents to accord approval for appointment of Mrs. N. Marian Usha Rani as Headmistress in Bentinck Higher Secondary School, Vepery, Chennai with effect from 01.09.2013.

4. The second writ petition in WP No. 9620 of 2014 has been filed by Mrs. Marian Usha Rani for the very same prayer to quash the proceedings dated 12.03.2014 of the second respondent as well as the consequential proceedings dated 14.03.2014 of the fourth respondent and after quashing the orders to issue a consequential direction to direct the official respondents to accord approval for her appointment as Headmistress in Bentinck Higher Secondary School, Vepery, Chennai with effect from 01.09.2013

5. The facts which gave rise to the filing of the writ petitions before the learned single Judge are as follows.

6. The Bentinck Higher Secondary School for Girls, Vepery, Chennai - 600 007 is run by the association of Saint Christopher. The same management runs the Saint Christopher College of Education at No.63, EVK Sampath Road, Vepery, Chennai - 600 007, which is also in Purasawalkam. The Headmistress of Bentinck Higher Secondary School DDD Chella Nachiyar retired on 31.08.2013. Therefore, advertisement was published in The Hindu newspaper on 09.06.2013, calling for applications for filling up the post of Headmistress. The advertisement reads thus - "wanted qualified Christian Women candidate for appointment as Headmistress"

7. In response, applications were received by the Management and ultimately, the management zeroed in on N. Marian Usha Rani as a Headmistress of the school on 24.07.2013. The teacher already working in the same school as a PG Assistant by name Ramani Jabathai also applied. She applied as a PG Teacher working in the same school. According to Ramani Jabathai, Mrs. Marian Usha Rani did not possess the prescribed qualifications. Therefore, Ramani Jebathai sent a representation dated 17.09.2013 to the official respondents not to accord approval of appointment of Mrs. Marian Usha Rani. Thereafter, Ramani Jebathai also filed WP No. 31245 of 2013 before this Court praying to quash the order dated 24.07.2013 appointing Marian Usha Rani as Headmistress of the School. By order dated 20.11.2013, this Court, finding that Ramani Jebathai has already filed a statutory appeal on 09.11.2013, disposed of the writ petition with a direction to the appellate authority to dispose of the appeal. Pursuant to such direction, the Joint Director of School Education, after hearing the Management of the School and the two teachers namely Marian Usha Rani as well as Ramani Jebathai, passed the order dated 12.03.2014 cancelling the appointment of Mrs. Marian Usha Rani as Headmistress of the School with a direction to the Management of the School to appoint a person with all the requisite qualification as Headmistress. Challenging the order dated 12.03.2014 of the Joint Director of School Education, the two writ petitions, aforesaid, have been filed before the learned single Judge.

8. The learned single Judge taken up both the writ petitions for consideration. After hearing the counsel for both parties the learned single Judge dismissed the writ petitions by concluding that in the advertisement issued by the management, it was not specifically mentioned that the age limit for appointment to the post of Headmistress is applicable only for outside candidates, which has deprived the eligible teachers working in the school from submitting their applications. Similarly, the eligibility criteria for the in-service candidates has not been mentioned in the advertisement. In

effect, the learned single Judge concluded that the selection process is vitiated inasmuch as the in-service candidates working in the school could not participate in the selection process.

9. Fr. Xavier Arulraj, learned Senior counsel for the appellant in these appeals submitted that Bentinck Hr. Sec. School for Girls Vepery, Chennai - 600 007 is a Christian Minority institution established in the year 1937. In the said School, the post of Headmistress fell vacant due to retirement of the incumbent teacher. The Management constituted a selection committee for appointing a eligible candidate from among the staff of the school as well as candidates from the open market. The committee conducted interview and ultimately zeroed in on Mrs. N. Marian Usha Rani as Headmistress of the school. The above said Marian Usha Rani was already working in the school as B.T. Assistant and she possess all the requisite qualification. The selection of Mrs. Marian Usha Rani was on merits and ability as assessed by the selection committee. Pursuant to such selection, she joined the post of Headmistress on 01.09.2013. When proposals were forwarded for according approval of her appointment, Mrs. Ramani Jebathai preferred an appeal to the Joint Director of School Education besides preferring a writ petition in WP No. 31245 of 2013. Pursuant to the directions issued by this Court in WP No. 31245 of 2013 on 20.11.2013, the Joint Director of School Education rejected the approval sought for appointment of Mrs. Marian Usha Rani on untenable grounds. According to the learned Senior counsel, the Joint Director of School Education has no power as an appellate authority under Section 41 of the Tamil Nadu Recognised Private Schools Regulation Act, 1973 as it has been struck down by an order dated 24.09.1976 in WP No. 522 of 1975 by specifically holding that the school was established and administered by the religious linguistic minority community as guaranteed under Article 30 (1) and 26 of the Constitution of India and therefore the Tamil Nadu Recognised Private Schools (Regulation) Act, 1975 (Act 29 of 1974) and the Tamil Nadu Recognised Private School (Regulation) Rules 1974 framed under the Act are ultra vires of Article 19 (1) (a) (f) and 30 (1) of the Constitution of India inasmuch as the said Act and the Rules infringe the rights of the minority institutions. It was specifically held that Section 41 to 44 of the Act providing for appeal and Section 45 which provides for revision by the Government in regard to decision relating to the aforementioned matters are not applicable to minority institutions. Therefore, the order of the Joint Director of School Education, refusing to accord approval of appointment of Mrs. Marian Usha Rani is legally unenforceable.

10. The learned Senior counsel for the appellant also submitted that the order passed by the Joint Director of School Education proceeds as if Mrs. Marian Usha Rani does not satisfy the age limit of 48 years as on 01.06.2013 and that the management ought to have conducted interview of all the qualified Post Graduate Assistants, including non-Christians working in the School. The Joint Director of School Education did not consider the fact that appointment of Mrs. Marian Usha Rani is preceded by an interview and the selection process was followed by an advertisement in the newspaper and upon following all the procedures established by law. While so, the Joint Director of School Education ought not to have interfered with the selection and appointment of Mrs. Marian Usha Rani as Headmistress of the School.

11. The learned Senior counsel further submitted that the learned single Judge upheld the right of the management to select and appoint a person of their choice. However, the learned single Judge held that a fair procedure has not been followed by affording an opportunity to the teachers already working in the school. But, the learned single Judge did not consider the fact that an Office note dated 12.06.2013 relaxing the age limit was duly communicated to all the teachers, while so, the appointment of Mrs. Marian Usha Rani is proper.

12. The learned Senior counsel for the appellant placed reliance on the decision of the Honourable Supreme Court in the case of Manager, Corporate Educational Agency vs. James Mathew and others reported in (2017) 15 Supreme Court Cases 595 wherein it has been held that when once the management of a minority educational institution makes a choice of a qualified person to the post of Principal, the Court cannot go into the merits of the choice of the rationality or propriety of the process of choice.

13. The learned Senior counsel proceeded to contend that qualification prescribed in Annexure V (VI) (I) of the Tamil Nadu Recognised Private Schools (Regulation) Act read with Rule 8 of the Tamil Nadu Minority School (Recognition and Payment of Grant) Rules provides that a Headmaster or Headmistress of a Higher Secondary School shall possess a Master's Degree of a University in the State for teaching any of the languages under Parts I and II or subjects under Part III, Group A of the syllabus for Higher Secondary Courses or a Masters Degree of equivalent standard in any one of the subjects or languages specified in the said syllabus or a certificate issued by the University of Chennai for having undergone the Certificate Course in Science and Humanities for Graduate Teachers in High Schools during the year 1960-1964. Mrs. Marian Usha Rani duly

satisfy the qualifications prescribed in the aforesaid Act and Rules. She possess a B.Sc., (Chemistry) Degree, B.E., and M.A. (Economics) and M.Ed., She has teaching experience of 24 years as B.T. Assistant in the same school. Therefore, Mrs. Marian Usha Rani fulfills all the educational qualification and other parameters required for appointment to the post of Headmistress and accordingly she was appointed to the post. In such circumstances, it is not open to the Joint Director of School Education to review such appointment made by the School.

14. The learned Senior counsel also further contends that the fifth respondent, before the Writ Court, has contended that Rule 15 (4) (ii) of the Act specifically provides that those who are working in the feeder category post has to be considered for appointment. According to the learned Senior counsel, the question of consideration of those working in feeder category posts will not be applicable to minority institutions. A minority institution can prescribe the qualification and mode of selection in a manner they prefers over which the appellate authority cannot interfere. Such an interference or restriction will be an encroachment into the right of administration and it is legally impermissible. In this context, the learned Senior Counsel for the appellant placed reliance on the Full Bench decision of this Court in the case of The Saliar Mahajan Higher Secondary School vs. The Joint Director reported in 1995 Writ Law Reporter 277 to contend that Rules framed for recruitment of staff in Higher Secondary Schools are only administrative Rules and they cannot be treated as statutory Rules. He would further contend that Rule 15 (4) (ii) of the Rules falls under the said category that the feeder category for the post of Headmistress of a Higher Secondary School, who are class I employees of the Government servant, does not bind the minority schools, as it has no statutory force. According to the learned Senior Counsel, the post of Headmistress is a protected post and it is the prerogative of the minority management to choose a person in whom they repose confidence. While so, such appointment cannot be interfered with the Government by an administrative order.

15. The learned Senior counsel contended that the learned single Judge did not consider the fact that in-service candidates were duly informed about the selection process and none of them were prevented from participating in the selection process. However, the learned single Judge erroneously concluded that the advertisement caused by the management did not specify about the age limit as on 01.06.2013. According to the learned Senior counsel, the age limit of 48 as on 01.06.2013 was stipulated only in respect of the outsiders and it has nothing to do with the participation of the teachers already working in the school. Even otherwise, the selection committee can relax the stipulations so as to find out a suitable person

to hold the post. In this context, the learned Senior counsel would vehemently contend that by an office note dated 12.06.2013, the in-service candidates were duly informed about the age criteria for selection to the post of Headmistress, but the learned single Judge concluded that such office note was not duly circulated among the in-service candidates which deprived them from participating in the selection process. In any event, the Christian Minority management has taken a policy decision to appoint only a Christian as Headmistress to protect their linguistic minority status. The Director of School Education had erroneously refused to accord approval of the appointment of Mrs. Marian Usha Rani, which is only a breach of Article 30 (1) of The Constitution of India. When the selection was preceded by an advertisement, followed by interview conducted by a duly constituted selection committee, interference of the Joint Director of School Education, as confirmed by the learned single Judge, is not warranted. The learned Senior counsel therefore prayed for allowing the appeals.

16. Mrs. Kavitha, learned Government Advocate appearing for the official respondents, would contend that pursuant to the directions issued by this Court in WP No. 31245 of 2013 filed by Ramani Jebathai, the Joint Director of School Education conducted an enquiry. The Joint Director of School Education, after enquiry, concluded that Mrs. Marian Usha Rani has not completed 48 years of age as on 01.06.2013 as required in the notification dated 09.06.2013 issued by the management in the newspaper. Further, there is no evidence made available to show that the application of Mrs. Marian Usha Rani was sent by registered post as required in the advertisement dated 01.06.2013. Further, it was noticed that Mrs. Marian Usha Rani never worked as a Post Graduate Assistant and not taken any class for higher secondary through out her career in Bentinck Higher Secondary School, Vepery. At the relevant point of time, Mrs. Marian Usha Rani was working as B.T. Assistant and she was not a Post Graduate Teacher as per the notification issued by the management of the School. Therefore, it was concluded that Mrs. Marian Usha Rani did not fulfil the statutory requirements prescribed under Rule 15 (4) (i) of the Tamil Nadu Recognised Private School (Regulation) Act. The learned single Judge, considering the reasons assigned by the Joint Director of School Education has rightly dismissed the writ petitions and therefore, she prayed for dismissal of the writ appeals.

17. Mr. Govardhanan, learned counsel appearing for the contesting candidate namely Ramani Jebathai, would vehemently contend that for the purpose of selecting a suitable candidate for the post of Headmistress, a selection committee was constituted on 10.05.2013. On 05.06.2013, the selection committee framed the qualification for appointment to the post

of Headmistress and also fixed the mode of submission of application. As per the prescribed qualification, a candidate should have completed atleast 48 years of age as on 01.06.2013 and those who are interested to apply for the post must submit the application by registered post to the management. Accordingly, an advertisement was issued prescribing the above qualification in The Hindu on 09.06.2013. According to the Management, the age limit was relaxed in respect of inservice candidates through a office note dated 12.06.2013, but it was not displayed in the notice board and any of the in-service candidates has any knowledge about the so-called office note. Even the so-called office note, over which reliance was placed by the management, was not produced before the Joint Director of School Education during the enquiry. An office note was produced subsequently in the writ petition was signed by Miss. D.D.D. Chellanachiar, who was not competent to sign it as the selection committee alone is competent to sign any such office note. The selection committee has not authorised the management to issue such a office note. Further, the learned single Judge concludes that the application of Mrs. Marian Usha Rani was not sent through registered post, as required. In such circumstances, the learned single Judge rightly held that Mrs. Marian Usha Rani did not possess the prescribed age limit for appointment to the post of Headmistress and her appointment is contrary to the notification issued by the management. The learned single Judge also rejected the contention of the appellant that the appointment is not by means of direct recruitment but it is only by means of a promotion. According to the learned counsel, if it is not a direct recruitment and only a promotion, then all those who are eligible, in the feeder category, must be given an opportunity to participate in the selection process. In any event, the selection was not transparent and therefore, the order passed by the learned single Judge is perfectly in order. In such circumstances, the learned counsel appearing for the contesting respondent prayed for dismissal of the writ appeals.

18. We have heard the learned counsel on either side and perused the materials placed on record. The only issue that arise for consideration in these appeals is whether the appointment of Mrs. Marian Usha Rani as Headmistress of Bentinck Hr. Sec. School for Girls is made by following the procedures contemplated under law.

19. On 09.06.2013, an advertisement was caused by the management of Bentinck Higher Secondary School, Vepery in The Hindu newspaper inviting applications for filling up the post of Headmistress both from the in-service candidates as well as from open candidates. One of the requirements is that the candidate should have completed 48 years of age as on 01.06.2013. Yet

another condition is that the applications must be sent through registered post to the Convener of Selection Committee of Association of St. Christopher's College of Education, No.63, E.V.K. Sampath Road, Vepery, Chennai. It appears that an Office Note dated 12.06.2013 was made by the outgoing Headmistress, which reads as follows:-

"Consequent on my retirement with effect from 31.08.2013, the vacancy for the post of Headmistress was advertised in the Hindu calling for applications from qualified candidates. All the qualified teachers in our school were encouraged to apply for the same. It was made clear to our staff that the age limit notified in the advertisement is applicable only to those who are directly recruited from outside and not to our staff, who will be appointed on promotion as guided by the selection committee."

20. This office note, as is evident, was signed by the outgoing Headmistress of the School and not by the selection committee, which was constituted to select the Headmistress for the school. Elaborate arguments were advanced by counsel for the contesting respondent namely Ramani Jebathai to the effect that the Office Note will not have any force of law besides it was not displayed in the notice board at all informing the teachers working in the school about the age relaxation or applicability of the age as notified in the advertisement. It is his contention that had it been duly informed to the teachers, more number of teachers would have participated in the selection process, but they were deprived of their opportunity to participate in the selection process. Thus, it is his contention that the management pre-determined the entire selection process to appoint Mrs. Marian Usha Devi as Headmistress of the School and therefore the entire selection process is marred by bias and procedural flaws. It is also contended that Mrs. Marian Usha Devi did not possess the prescribed qualification and her appointment to the post of Headmistress, by ignoring the contesting respondent Ramani Jebathai, is legally not sustainable.

21. Countering the submission of the counsel for the contesting respondent, the learned senior counsel for the appellant submitted that Mrs. Marian Usha Devi possess all the requisite qualification. Even assuming that the office note was not displayed, still, in appropriate cases, the selection committee has power to relax any of the conditions, including the age to select Mrs. Marian Usha Devi to the post of Headmistress. It is also contended by the learned Senior counsel for the appellant that the intention of the school management to select a Christian as Headmistress cannot be found

fault as the appellant institution is a Christian Minority management and it is free to select a teacher of their choice. The learned Senior counsel for the appellant also advanced elaborate argument as to the rights vested with a minority institution and the interference of the educational authorities in the decisions taken by such minority institution is uncalled for.

22. It is seen from the records that only three Teachers from the same school had applied for the post of Headmistress and they are Marian Usha Rani, Ramani Jabathai and Jasmin Patience Willington. Out of the three teachers, the Management zeroed in on Mrs. Marian Usha Rani as Headmistress. Such appointment of Mrs. Marian Usha Rani was questioned by the contesting respondent Ramani Jebathai by preferring a statutory appeal to the Joint Director of School Education, who, after conducting enquiry, refused to accord approval to the appointment of Mrs. Marian Usha Devi.

23. It is seen that the contesting respondent Mrs. Ramani Jebathai, is a Post Graduate Assistant from the same school. She also submitted her application, but she was not selected. She was holding PG in Economics and was teaching Higher Secondary Classes in the very same School. Therefore, she had approached the Joint Director of School Education with a statutory appeal objecting to accord approval for appointment of Mrs. Mariam Usha Rani.

24. The Director of School Education concluded that Mrs. Mariam Usha Rani was a teacher in the very same school. She was a Chemistry Teacher qualified with B.Sc (Chemistry) and B.Ed and teaching as a B.Ed Assistant. It was noticed that she was not a Post Graduate Teacher and therefore not qualified to hold the post of Headmistress as per the paper publication.

25. It is an admitted fact that Mrs. Marian Usha Rani did not complete 48 years of age as on 01.06.2013. In the advertisement issued by the Management of the School, it was specifically stated that candidates should have completed 48 years of age as on 01.06.2013. Having issued such an advertisement, the Management cannot now alter such condition in selecting Mrs. Marian Usha Devi. The notification dated 01.06.2013 binds the selection of Mrs. Marian Usha Devi. However, it is stated that by way of office note, the age relaxation was considered for in-service candidate. Admittedly, the office note was not signed by the selection committee, but the outgoing Headmistress. Even before the Joint Director of School Education, the office note was not produced, but it was produced for the first time before the Writ Court. Therefore, in the absence of fulfilling the age criteria, the selection and

appointment of Mrs. Marian Usha Devi, in our opinion, is contrary to the terms and conditions of appointment. It is well settled that after entering into the arena, changing the rules of the game is not well founded as it would deprive the other candidates from participating the selection. In our opinion, such a age relaxation by way of office note would vitiate the entire selection process.

26. It is seen from the materials placed before us that the teachers who had PG degree in the subject and who are teaching in the school did not apply to the post of Headmistress under the impression that that they did not complete 48 years of age, as notified. This would only indicate that they are not aware of the office note said to have been displayed in the notice Board on 12.06.2012. As mentioned above, the office note dated 12.06.2012 was signed by the outgoing Headmistress and not by the Selection Committee. With the result, those who did not apply in spite of having the prescribed qualification of 10 years experience in teaching and P.G degree in the subject taught in the Higher Secondary classes, History, Economics, Tamil, English, Physics, Chemistry, Maths, Commerce were deprived of an opportunity to participate in the selection process and they were kept out by the management itself. Therefore, we conclude that all those who are eligible had not been given an opportunity to participate in the selection process. Therefore, with an ulterior motive to keep out qualified candidates, the management of the School had cleverly published the advertisement stating that the candidate should have completed 48 years, but such age prescribed in the notification was relaxed by way of an Office note. On consideration of the circumstances leading to the appointment of Mariam Usha Rani, we are of the view that Mrs. Marian Usha Rani was not appointed by following a transparent selection process. What had been stated in the paper publication was not followed by the Management. If there had been an open clause in the paper advertisement that in house teachers who are experienced also are eligible to apply and relaxation of age will be applicable to them, then, several teachers would have applied for the post. Further, it is seen that the appointment order of Mariam Usha Rani in Page 5 of the typed set of the fifth respondent mentions that it is a case of appointment on promotion. This would only indicates that the Management has not chosen to consider the other teachers who had been working as a PG Assistant in the very same school belonging to the same religion. If the argument of the learned Senior counsel for the appellant is to be accepted that except Mariam Usha Rani, other candidates were non-christians and therefore, the appellant had to appoint only Mariam Usha Rani has to be rejected. A perusal of the typed sets furnished by the appellant and the fifth respondent would go to show that those who were not selected also belonged to the Minority Religion.

27. It is seen that Mrs. Ramani Jebathai, the contesting respondent, has now attained the age of superannuation. But that cannot justify the appointment of Mariam Usha Rani who was not properly appointed by the Management by following the norms. It is also seen that pending disposal of the writ petition, this Court granted interim stay on condition that the interim stay shall not be used as a weapon at the time of final hearing in the Writ Petition. Therefore, the retirement of Mrs. Ramani Jebathai, contesting respondent in this case, during the pendency of the writ appeals, will not have any bearing in adjudicating these appeals.

28. It is admitted that the application of Mrs. Marian Usha Devi was not sent by registered post, as required in the advertisement issued by the school management. The contesting respondent Ramani Jebathai, even though was teaching in the very same school, applied through Registered Post, but Mariam Usha Rani did not apply through Registered Post. Her application was sent directly to the convener of the selection committee. This creates a doubt as to the manner in which the management had conducted the selection process. The selection process was pre-planned to appoint only Mrs. Marian Usha Devi as Headmistress. When advertisement was issued, opportunity should be given to all eligible candidates to participate and the gay abandon in which the management had selected and appointed Mrs. Marian Usha Devi cannot be appreciated. In fact, the teachers who could not participate in the selection process due to the age restrictions imposed by the management had sent their representation to the Joint Director of School Education. The Joint Director of School Education conducted an enquiry. In the enquiry, the management could not place the file relating to the selection process. Therefore, the learned Single Judge rightly concluded that the Management of the School had not acted fairly in the matter of appointment of a Headmistress for the School.

29. It is true that as a minority institution, the appellant school is vested with certain privileges and rights guaranteed under the Constitution. It is also true that they have a right to choose and appoint teachers and in such event, Rule 15 4 (i) of Tamil Nadu Private School Regulation Act cannot be applied to their case. However, it is not to be noted that such privilege or right conferred to a minority institution cannot be taken advantage to discard transparent procedures from being followed in the matter of selection of a candidate, much to the chagrin of the other teachers. Thus, when there is violation of established procedures contemplated under law, even by a minority institution, interference of the Court is warranted.

30. We wish to observe that without considering the qualified Christian Candidates who are in possession of the qualification and experience and who had been teaching in the very same institutions, the management had wasted time and money in contesting the present litigation. When the candidate who has basic degree in particular subject and PG degree in the very same subject alone can be appointed as PG Assistant in Higher Secondary School to handle Higher Secondary Classes and the Headmistress of the Higher Secondary School shall be a PG Assistant and when there are PG Assistants available in the very same school, keeping them out of the selection process before the advertisement was given out by the management for the appointment of Headmistress, is unfair. If the teachers of the very same school are not kept out and those who responded to the public advertisement by sending applications had been interviewed and selected, based on their qualifications, then this litigation would not have arisen. The Management of the School used the advertisement as a ploy to keep out the qualified PG teachers in the very same School from applying the same. If it had invited applications and if non-service candidates are to be considered and relaxation could be granted, it should be specified in the public advertisement also. It should have been mentioned in the notice put up on the School notice board. Only during the arguments, the learned counsel for the appellant states that the Management of the Minority School have discretion to relax the qualification. As per the reported ruling relied on by the learned counsel for the appellant herein in (i) TMA Pai Case (ii) (Eka Ratchagar Sabai Higher Secondary School & another Vs. K.Sumathi) 2007-4-L.W.617 (iii) N.Ammed Vs. The Manager, Emjay High School (1998) 6 SCC 674 (iv) The Secretary, Malankara Syrian Catholic College vs T.Jose & Ors (2007) 1 SCC 386, the minority institution has the right to choose Headmaster/ Headmistress. Whether, the school had followed their own procedures and their own prescribed qualified, is the question involved in this case. Otherwise, there is no need for the Minority Institutions to send approval to the Director of the School Education. Whatever done by the Management can be simply approved by the Government. The public authorities have some control over the affairs of the Minority Institutions which receives aid from the Government. Therefore, the action of the minority Institutions is subject to the scrutiny of the State. If no other Christians are available then the appointment of the Mariam Usha Rani could be accepted. But there were a number of Christians available in the very same school in the cadre of PG Assistants with sufficient teaching experience, but they were kept out on the ground of age restrictions. On the other hand, Mariam Usha Rani, who had not completed 48 years, who was a B.T Assistant teaching class upto 10th Standard and who was a teacher in Chemistry but not

qualified as PG Assistant had been appointed as a Headmistress of the Higher Secondary School.

31. As per the submission of the learned counsel for the appellant, the Government has no authority to enquire into the process of appointment. The Minority Institutions have the discretion to appoint any one belonging to the Minority Community so as to protect their culture. This kind of arguments of the learned counsel for the appellant, Father Xavier cannot at all be accepted. When the education Institution is an aided Education, the salary of the teachers is spent from public money. Therefore, the Government has control, a limited and restricted control. Being a Minority Institution, they can appoint teachers who are qualified and the qualification is stated by the Management themselves. While so, it is for the Government to verify whether by its own standards or by the standards of the Management themselves, the qualifications prescribed by the management was valid and the due process or fair process was followed by the Minority Education Institution in the selection of the Headmistress.

32. The fifth respondent herein is a BT Assistant and PG in Tamil, but she was not selected though she was qualified on the date of the selection process. Now, she had superannuated during the pendency of Writ Petition. The Subsequent conduct of the Management of Saint Christopher College of Education in obtaining letters from PG Assistants who had prescribed qualification but did not apply amounts is only to justify the manner in which the selection process was conducted. This is found to be unfair on the part of the management of the Saint Christopher College of Education. Therefore, the arguments putforth by the learned counsel for the appellant relying on the decisions mentioned supra will not be applicable to this case.

33. The arguments of the learned counsel for the appellant that the Government has no say in the appointment of the teachers and Headmistress of the Minority Institutions as their rights, as minority institution, have to be protected, also cannot be accepted as they had been kept out of the selection process by the Management of the School though they were found to be of the same community as Minority Christians. When they have teaching experience, when they have PG qualification in the basic degree and had been teaching in the very same school for not less than 10 years, based on the conditions that they have not completed 48 years, they were kept out. That be the case, inviting application from Mariam Usha Rani who had not completed 48 years on the date of the application is itself violation of the condition stipulated by the management. The principle of estoppel applies here. The school has caused an advertisement goes to prove that those who are teaching in the very same

school as PG Assistant are not qualified but, the candidate, who is not a PG Assistant in the very same school had been appointed as Headmistress. As per Rule 15 (4) of the Tamil Nadu Private School Regulations Act for appointing Headmistress in a Government School or aided Private School of Headmaster can be appointed by promotion as Headmistress of Higher Secondary School which is not the case regarding the Mariam Usha Rani. Rule 15 (4) prescribes educational qualification for appointment of Headmaster/Headmistress which are as follows:-

(i) Those who have been already serving as Headmaster/Headmistress of any recognized school.

(ii) Those who had been working as High School Headmaster/Headmistress can also be posted as Headmaster/Headmistress of Saint Bentinck School. It is considered as promotion for Headmaster/Headmistress from High School to Higher Secondary School.

(iii) The persons who had completed the Post Graduation and having Degree in Education. Those who have Post Graduate qualification as PG teachers and who possess B.Ed.

34. In this case, on the date of the application, she was not the Headmistress of the High School under the Management in a different School. If that be the case, Mariam Usha Rani being appointed straight away as Headmistress of Bentick Higher Secondary School could have been accepted. But, that is not the case here. It is true, Mariam Usha Rani is a PG Assistant but as per the requirement, those who have basic qualification in particular discipline shall acquire PG in the very same discipline, whether it is Tamil, English, History, Commerce, Maths, Physics, Chemistry, Botany, Zoology. Whatever shall be the subject, in the same subject, PG degree should have been obtained. Only then he/she is eligible to be appointed as PG Assistant. Here, Mariam Usha Rani had acquired PG degree in Economics, in different subject, whereas basic qualification is Chemistry and B.Ed., degree in Mathematics and M.A in Economics. Therefore, her claim to the post of Headmistress cannot be justified.

35. For all the reasons mentioned above, we confirm the order dated 18.07.2019 made in W.P. Nos. 9620 & 9612 of 2014. The writ appeals are dismissed. No costs. Connected miscellaneous petition (s) is/are closed.

s/d-
Deputy Registrar (CS)

True Copy

Sub-Assistant Registrar

dh

To

1. The Secretary Government of Tamil Nadu
Department of School Education,
Fort St. George,
Chennai - 9.
2. The Joint Director of School Education
(Higher Secondary)
DPI Campus, College Road, Chennai - 6.
3. The Chief Educational Officer
Panagal Building,
Saidapet, Chennai - 600 015.
4. District Educational Officer
Chennai North
Ambethkar School (upstairs)
Gandhi Irvin Bridge,
Chennai - 600 008.

+1 CC to Mr.P. Subburaj, Advocate sr 23176.

+2 Ccs to Father Xavier Association sr 23733.

+1 Cc to The Government Pleader sr 23364.

W.A.Nos.2878 & 2882/2019

JP (CO)
SP (30/06/2021)

सत्यमेव जयते

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